

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CONICAL CUTTING TOOLS, INC.	)	
	)	Case No.
Plaintiff,	)	Hon.
vs.	)	
	)	Removed from Kent County Circuit Court
SELECTIVE INSURANCE COMPANY OF	)	Case No. 22-11520-CK
AMERICA,	)	
	)	
Defendant.	)	

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**DEFENDANT SELECTIVE INSURANCE COMPANY OF AMERICA'S  
NOTICE OF REMOVAL TO FEDERAL COURT**

TO: United States District Court  
Judges of the Western District of Michigan, Southern Division

Defendant, Selective Insurance Company of America ("Selective"), by and through undersigned counsel, pursuant to 28 U.S.C. § 1332, 1441 and 1446, submits this Notice of Removal from the Kent County Circuit Court, State of Michigan, to the United States District Court for the Western District of Michigan, the judicial district in which this action is pending, and in support of this Notice of Removal, states as follows:

1. On or about December 8, 2022 Plaintiff Conical Cutting Tools, Inc. ("CCTI") filed a Complaint in Kent County Circuit Court, which was assigned Case No. 22-11520-CK and in which Selective is named as the only Defendant. *See*, Summons and Complaint, attached hereto as **Exhibit 1**.

2. Plaintiff executed service of process on Selective by serving the Summons and Complaint via Certified Mail upon its Registered Agent Corporation Service Company on December 19, 2022.

3. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b) because fewer than thirty (30) days have passed since Selective received “through service of process or otherwise, a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

4. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon Selective in this action, specifically the Summons and Complaint, are attached as Exhibit 1.

5. On information and belief, CCTI is a corporation incorporated under the laws of the State of Michigan with its principal place of business in the State of Michigan.

6. Selective is an insurance carrier organized under the laws of the State of New Jersey with its principal place of business in the State of New Jersey.

7. Selective issued a policy of insurance to its named insured Conical Cutting Tools, Inc. bearing policy number S 2412962 for the policy period August 1, 2020 to August 1, 2021 (the “Selective Policy”).

8. This action seeks damages for breach of contract in connection with the adjustment of a first-party commercial property insurance claim arising damage to certain machinery at located in CCTI’s facility at 3890 Buchanan Avenue SW, Grand Rapids, Michigan allegedly caused by breakdown of the machinery. *See*, Complaint, Ex. 1.

9. The Complaint seeks a judgment in CCTI’s favor in “excess of \$25,000 including consequential damages as well as 12 percent interest pursuant to MCL 500.2006, plus costs, and attorneys’ fees...”. *See*, Complaint, Ex. 1, p. 5.

10. While Selective disagrees with and disputes CCTI’s claim, this action places at issue and in controversy monetary relief and damages which exceed this Court’s original

jurisdictional minimum of \$75,000, exclusive of interest and costs, because, on information and belief, CCTI seeks from Selective the cost to replace machinery allegedly damaged that exceeds \$75,000, as well as consequential damages.

11. Pursuant to 28 U.S.C. § 1332(a), this Court has original jurisdiction over this civil action in that it involves a controversy between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Thus, removal is proper in accordance with 28 U.S.C. § 1441(a).

12. Selective has not filed any responsive pleadings in the state court.

13. As required by 28 U.S.C. § 1446(b), this Notice of Removal, by means of the Notice of Filing Removal filed in the state court action and attached hereto as **Exhibit 2**, Brotherhood is providing notice to CCTI and to the Kent County Clerk of Court of (a) this Notice of Removal; (b) the fact that this action is to be docketed in this Court; and (c) that this Court shall hereafter be entitled to grant all relief to Selective as is proper under the circumstances.

14. Selective reserves the right to supplement this Notice of Removal if it becomes necessary to do so.

WHEREFORE, Selective respectfully requests that this action proceed in this Court as a removed claim or cause or action under 28 U.S.C. §§ 1441 and 1446.

Respectfully submitted,

PLUNKETT COONEY

By: /s/Drew L. Block

Drew L. Block (P81768)

PLUNKETT COONEY

38505 Woodward Avenue, Suite 100

Bloomfield Hills, MI 48304

P: (248) 901-4000  
dblock@plunkettcooney.com  
***Attorneys for Defendant***  
***Selective Insurance Company of America***

Dated: January 9, 2023

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 9th day of January, 2023, I filed the foregoing Notice of Removal of State Court Civil Action to the United States District Court for the Western District of Michigan Southern Division and this Certificate of Service with the Clerk of the Court through their electronic filing system and via email and U.S. mail to:

Todd A. Stuart (P70187)  
Stuart Law, PLC  
161 Ottawa Ave. NW, Ste. 111  
Grand Rapids, MI 49503  
tstuart@stuartlawplc.com

/s/Drew L. Block  
Drew L. Block (P81768)

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# EXHIBIT 1

Approved, SCAO	Original - Court 1st copy - Defendant	2nd copy - Plaintiff 3rd copy - Return
STATE OF MICHIGAN JUDICIAL DISTRICT KENT COUNTY JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 22-11520-K

Court address  
180 Ottawa Ave. NW, Grand Rapids, MI 49503

Court telephone no.  
616.632.5220

Plaintiff's name(s), address(es), and telephone no(s). CONICAL CUTTING TOOLS, INC.
Plaintiff's attorney, bar no., address, and telephone no. Todd A. Stuart (P70187) Stuart Law, PLC 161 Ottawa Ave NW, Suite 111 Grand Rapids, MI 49503 616.450.9885

Defendant's name(s), address(es), and telephone no(s). SELECTIVE INSURANCE COMPANY OF AMERICA c/o CORPORATION SERVICE COMPANY 2900 WEST ROAD, SUITE 500 EAST LANSING, MI 48823  888.690.2882
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Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

#### Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

#### Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ \_\_\_\_\_ Court, where

it was given case number \_\_\_\_\_ and assigned to Judge \_\_\_\_\_.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

**SUMMONS**

**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date DEC 13 2022	Expiration date MAR 14 2023	Court clerk LISA POSTHUMUS LYONS
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\*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

**PROOF OF SERVICE**

**SUMMONS**  
Case No. 22- 11520

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**

<input type="checkbox"/> <b>OFFICER CERTIFICATE</b> I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> <b>AFFIDAVIT OF PROCESS SERVER</b> Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)
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- ☐ I served personally a copy of the summons and complaint,  
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with a Demand for Jury Trial

List all documents served with the summons and complaint

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time
Selective Insurance Company of America c/o Corporation Service Company	2900 West Road, Suite 500, East Lansing, MI 48823	

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_  
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with

Attachments

on \_\_\_\_\_  
Day, date, time

Signature \_\_\_\_\_ on behalf of \_\_\_\_\_



STATE OF MICHIGAN  
KENT COUNTY CIRCUIT COURT

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CONICAL CUTTING TOOLS, INC.,

CASE NO. 22-

11520C/K  
-CB

Plaintiff,

HON.

v.

SELECTIVE INSURANCE COMPANY OF  
AMERICA,

Defendant.

---

Todd A. Stuart (P70187)  
Attorney for Plaintiff  
STUART LAW, PLC  
161 Ottawa Ave NW, Suite 111  
Grand Rapids, MI 49503  
616.450.9885  
tstuart@stuartlawplc.com

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THERE IS NO OTHER PENDING OR RESOLVED CIVIL  
ACTION ARISING OUT OF THE TRANSACTION OR  
OCCURRENCE ALLEGED IN THE COMPLAINT.

**COMPLAINT**

1. This case involves an insurance company's wrongful denial of a property damage claim even though it was squarely within the policy, the insurance company received timely notice, and the insured provided all required proofs of loss and met all other requirements.

2. The sole issue in this case is whether insurance coverage for damage to machinery caused by the failure of an air supply system that caused the pumping of water into various machines is blocked by policy exclusions for damage caused by improper installation, water discharged to fight a fire, or wear, tear, deterioration, or corrosion.

**Parties and Jurisdiction**

3. Plaintiff Conical Cutting Tools, Inc. (“Conical”) is a Michigan corporation headquartered and doing business in Kent County, Michigan.

4. Defendant, Selective Insurance Company of America (“Selective”) is an insurance company doing business in the State of Michigan and is headquartered in Laurel County, Kentucky.

5. This claim involves damages to insured machinery located in Kent County, Michigan.

6. The amount in controversy exceeds \$25,000.

7. This Court has jurisdiction over this claim and the venue is proper.

**General Allegations**

8. Selective issued to Conical a commercial insurance policy, policy number S2412962, a copy of which is in Selective’s possession, covering Conical’s business at 3890 Buchanan Avenue SW, Grand Rapids, Michigan (the “Property”) from loss.

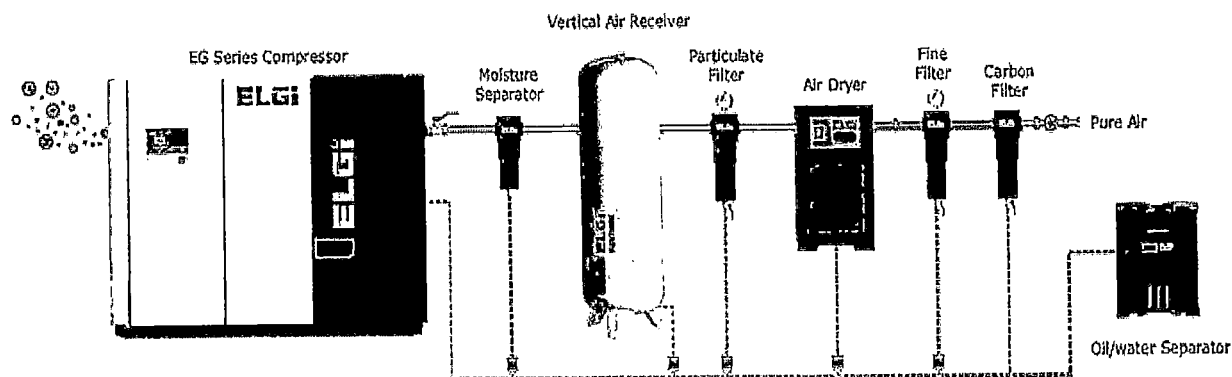
9. On June 2, 2021, Conical’s employees or agents discovered damage to one of Conical’s ANCA computer numerical control (CNC) machines located on the Property.

10. Over the following weeks, similar damage was discovered to several other CNC machines located on the Property.

11. Conical promptly hired a local repair technician and a manufacturer technician to investigate the cause of the damage.

12. On investigation, it was determined that the root cause of the damage was the failure of an air compressor and air dryer that, along with other components, comprise the ATLAS COPCO air supply system that feeds Conical’s CNC machines.

13. The following illustration loosely depicts Conical's air supply system:



14. On or immediately prior to June 2, 2021, the air compressor failed, preventing it from filtering the vast majority of water out of the air before entering the air storage tank.

15. The water that was not filtered out of the compressor quickly filled the air storage tank and flooded the air filter, which is meant to filter out any remaining water before the air is fed to the CNC machines.

16. The flooded air filter soon failed and water was discharged directly into the CNC machines, eventually causing their failure.

17. Neither the local repair technician nor the manufacturer technician ever determined that the damage to Conical's air supply system or the CNC machines resulted from improper installation, water discharged to fight a fire, or wear, tear, deterioration, or corrosion.

18. The insurance policies covered Conical's machinery at all relevant times.

19. All premiums were paid and current, and the policies were in full force and effect at all relevant times, including on June 2, 2021.

20. Conical timely notified Selective on July 6, 2021, that Conical had suffered damage to its machinery.

21. Conical delivered to Selective, pursuant to the terms of the policies, satisfactory proof of the amount of the losses.

22. Nevertheless, Selective denied the claim.

23. Selective, through independent insurance company Hartford Steam Boiler, conducted an investigation that confirmed the root cause of the damage: the overaccumulation of water in the air compressor storage tank, which made its way through the air dryer and into several of Conical's CNC machines.

24. The damage caused to Conical's air supply system and CNC machines is a covered loss.

25. Selective's bases for denying the claim were purported exclusions for improper installation, discharge of water, and wear, tear, deterioration, and corrosion.

26. Neither the air supply system nor the CNC machines were improperly installed.

27. The damage was not caused by discharge of water as defined in the parties' insurance policy.

28. The damage was not caused by wear and tear.

29. The denial of Conical's claim was incorrect, not supported by Selective's investigation, and in bad faith.

#### **COUNT I - BREACH OF PROPERTY INSURANCE CONTRACT**

30. Conical incorporates by reference all preceding allegations.

31. Conical and Selective entered into a valid commercial insurance contract insuring Conical's property.

32. The commercial insurance contract covered the damage to Conical's machinery and was effective at the time of loss.

33. Selective was required by law to pay Conical's claim within 30 days of receipt of proof of the amount of loss.

34. Selective owed Conical the duty to timely pay Conical's claim.


35. Selective breached the parties' commercial insurance contract when it failed to pay the claim despite Conical's timely notification of the covered loss and timely submitted proof of loss.

36. As a direct and proximate result of this breach of contract, Selective remains indebted to Conical for its insured losses, and Conical has sustained damages that were in the contemplation of the parties when the contract was made or that are the natural and usual consequences of a breach of an insurance contract. These damages include, but are not limited to, the continued costs of repair.

37. Conical is also entitled to 12 percent interest pursuant to MCL 500.2006.

WHEREFORE, Conical requests that this Court enter a judgment in its favor and against Selective in excess of \$25,000 including consequential damages as well as 12 percent interest pursuant to MCL 500.2006, plus costs, attorney fees, and any other award or relief this Court deems just.

Dated: December 8, 2022, 2022



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Todd A. Stuart (P70187)  
Attorney for Plaintiff  
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Grand Rapids, MI 49503  
616.450.9885  
tstuart@stuartlawplc.com

STATE OF MICHIGAN  
KENT COUNTY CIRCUIT COURT

---

CONICAL CUTTING TOOLS, INC.,

CASE NO. 22-11520 <sup>CK</sup><sub>GB</sub>

Plaintiff,

HON.

v.

SELECTIVE INSURANCE COMPANY OF  
AMERICA,

Defendant.

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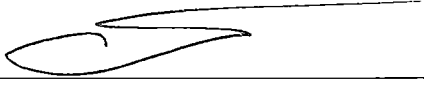
Todd A. Stuart (P70187)  
Attorney for Plaintiff  
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Grand Rapids, MI 49503  
616.450.9885  
tstuart@stuartlawplc.com

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**DEMAND FOR JURY**

Plaintiff Conical Cutting Tools, Inc. demands a Trial by Jury.

Dated: December 8, 2022



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Todd A. Stuart (P70187)  
Attorney for Plaintiff  
STUART LAW, PLC  
161 Ottawa Ave NW, Suite 111  
Grand Rapids, MI 49503  
616.450.9885  
tstuart@stuartlawplc.com

# EXHIBIT 2

**STATE OF MICHIGAN**  
**KENT COUNTY CIRCUIT COURT**

CONICAL CUTTING TOOLS, INC.,

Case No. 22-11520-CK

Plaintiff,

vs.

SELECTIVE INSURANCE COMPANY OF  
AMERICA,

Defendant.

---

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Drew L. Block (P81768)  
PLUNKETT COONEY  
Attorney for Defendant  
38505 Woodward Avenue, Ste. 100  
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(248) 433-7054  
[dblock@plunkettcooney.com](mailto:dblock@plunkettcooney.com)

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**NOTICE OF FILING NOTICE OF REMOVAL OF CIVIL ACTION**

TO: Clerk of the Kent County Circuit Court  
Counsel of Record

PLEASE TAKE NOTICE that Defendant, Selective Insurance Company of America, has filed on today's date a **Notice of Removal to Federal Court**, a copy of which is attached as **Exhibit A**. This Notice of Removal thereby effectuates removal of this civil action to the United States District Court for the Western District of Michigan, Southern Division in accordance with 28 U.S.C. § 1446(d). Accordingly, this Court shall proceed no further with this civil action unless and until it is remanded.



Respectfully submitted,

By: /s/Drew L. Block  
Drew L. Block (P81768)  
PLUNKETT COONEY  
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F: (248) 901-4040  
dblock@plunkettcooney.com  
***Attorney for Defendant Selective Insurance  
Company of America***

Dated: January 9, 2023

**PROOF OF SERVICE**

The undersigned certifies that on January 9, 2023, a copy of the **Notice of Filing**  
**Notice of Removal of Civil Action** and this **Proof of Service** were served upon the following  
counsel of record via the Court's electronic filing system to:

Todd A. Stuart (P70187)  
STUART LAW, PLC  
Attorney for Plaintiff  
161 Ottawa Ave. NW, Suite 111  
Grand Rapids, MI 49503  
[tstuart@stuartlawplc.com](mailto:tstuart@stuartlawplc.com)

I declare under penalty of perjury that the foregoing statement is true to the best of  
my knowledge, information and belief.

/s/Drew L. Block  
Drew L. Block (P81768)